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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES OF AMERICA, Plaintiff, v. **Jose Maria BUSTOS,** Defendant(s)	Magistrate Case No. '08 MJ 2548 COMPLAINT FOR VIOLATION OF: Title 8 U.S.C., Sec. 1324 (a)(1)(A)(ii) Transportation of Illegal Aliens

The undersigned complainant, being duly sworn, states:

On or about **August 14, 2008,** within the Southern District of California, defendant **Jose Maria BUSTOS** with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that aliens, namely, **Cecilia GARCIA-Perez, Maria Del Rosario MEJIA-Jimenez,** and **Chavelo LOZADA-Gonzalez** had come to, entered and remained in the United States in violation of law, did transport and move, said aliens within the United States in furtherance of such violation of law; in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii).

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

SIGNATURE OF COMPLAINANT
James Trombley
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS **18th** DAY OF **AUGUST 2008**

Barbara L. Major
UNITED STATES MAGISTRATE JUDGE

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CONTINUATION OF COMPLAINT:
Jose Maria BUSTOS

PROBABLE CAUSE STATEMENT

I declare under the penalty of perjury that the following statement is true and correct:

Furthermore, the complainant states that **Cecilia GARCIA-Perez, Maria Del Rosario MEJIA-Jimenez,** and **Chavelo LOZADA-Gonzalez** are citizens of a country other than the United States; that said aliens have admitted that they are deportable; that their testimony is material, that it is impracticable to secure their attendance at the trial by subpoena; and they are material witnesses in relation to this criminal charge and should be held or admitted to bail pursuant to Title 18, United States Code, Section 3144.

On August 14, 2008 at approximately 12:00 p.m., a citizen's report of a possible cloned Kiewit Construction vehicle in the area of Dairy Mart Road in San Diego, California. Based on the radio report Smuggling Interdiction Group (SIG) agents and Imperial Beach Smuggling Abatement Team Agents (SAT) responded to the area in order to locate the suspect vehicle. Recently alien smuggling organizations have started procuring vehicles and outfitting them to look like legitimate Kiewit construction vehicles, in essence cloning these vehicles.

Kiewit Construction is currently working on a huge construction project for the United States Border Patrol along the international border between the United States and Mexico. By utilizing these cloned Kiewit vehicles, the alien smugglers are able to blend very effectively with the legitimate Kiewit vehicles and get very close to the border without ordinarily being detected, so as to load up with illegal aliens. One cloned Kiewit vehicle had been seized by the Border Patrol in June of 2008.

Almost immediately after the radio call, Agent A. Kahl observed a Kiewit pickup truck turning westbound from Dairy Mart Road onto Servando Road. Supervisory Border Patrol Agent O. Alvarez spotted the Kiewit pickup parked on Bluehaven Court and ran a vehicle registration check on the displayed California license plate. The vehicle was registered to an individual who resides in San Diego. Had the vehicle been legitimate it would have come back registered to the Kiewit Construction Company. At this time, Agents established a static surveillance of the vehicle.

At approximately 12:35 p.m. the vehicle began to move and drove out to Dairy Mart Road and began to go southbound on Dairy Mart Road toward the international border. Agent R. Dellvillar and Agent Wallace, in separate vehicles, followed the vehicle. Both agents observed the vehicle drive past the water treatment plant at the intersection of Monument and Monument Road. The cloned Kiewit then executed a u-turn at 2721 Monument Road at a small parking lot and then proceeded north on Dairy Mart Road.

The cloned vehicle then turned right onto Camino De Las Plazas and went about a half mile east and came to a stop on the curb line. Agent Wallace drove past the vehicle and observed a male Hispanic driver behind the wheel of the vehicle alone in the truck. The driver was wearing a yellow plastic hard hat and yellow reflective safety vest to complete the ruse of being a legitimate Kiewit employee.

At approximately 12:48 p.m., the vehicle executed a u-turn and drove to Dairy Mart Road and went south bound toward the border. Agents observed the vehicle turn south at Monument and Monument Road and proceed past the legitimate Kiewit temporary parking lot. The cloned Kiewit vehicle then drove onto the hard packed gravel and dirt road toward the area known as "Whiskey 8". This roadway is used by Border Patrol Agents and construction vehicles and is only about 10 yards north of the international border fence.

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CONTINUATION OF COMPLAINT:
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Agents observed the vehicle on Remote Video Surveillance system as it drove toward an area known as "Russian Alley". The cloned vehicle pulled right along the border fence and came to a stop. The vehicle was stopped for about thirty seconds and turned around and started to depart. The agents observed the vehicle then drive east back toward the same area where it had entered the construction zone and border fence area. The agents operating the camera estimated that the driver was going in excess of 60 miles per hour.

Agent Wallace parked his vehicle at the corner of Monument and Monument Road. This was the likely exit point for the cloned Kiewit vehicle. Based on his officer experience and the actions of the vehicle and driver, Agent Wallace believed that the vehicle now contained either illegal aliens or narcotics. Agent Wallace deployed a set of three Stop Sticks near the corner of the road. Agent Wallace observed the vehicle approaching his location at high speed and moved to the front of his vehicle. Agent Wallace left the drivers door open to shield him if the spikes became airborne.

Agent Wallace observed the vehicle slow down as the driver seemed to realize that there were stop sticks in his path. The driver then accelerated and headed directly toward the open door of Agent Wallace's vehicle. Agent Wallace was wearing a black tactical armored vest carrier clearly marked POLICE FEDERAL AGENT with a Border Patrol badge affixed to the chest area. Agent Wallace was just forward of the door and stepped back believing that he was going to be hit by the load vehicle driver. Agent Wallace had a single stop stick in his hand and deployed that under the passenger side front tire and was nearly hit by the vehicle.

Agent Wallace watched the vehicle accelerate and proceed through the posted stop sign on Monument Road. The vehicle then proceeded north on Dairy Mart road and failed to yield to a marked Border Patrol Jeep unit. The vehicle continued at high speed and Agent Wallace regained visual sight of the vehicle as it approached the intersection of Camino De Las Plazas and Dairy Mart Road.

At that intersection SIG Agent M. Leon deployed a Magnum Spike set in the path of the oncoming vehicle. Agent Leon was being backed up by Agent R. Callaway on the shoulder opposite the load vehicles direction of travel. The driver purposefully crossed the yellow striped median headed toward the two agents. Both agents clearly had Border Patrol badges hanging from chains around their necks. Both agents, fearing for their lives had to move to cover behind their vehicles to keep from being struck.

The driver drove over the second set of spikes and continued north on deflating front tires. The driver then crossed into oncoming traffic just before the Dairy Mart Bridge overpass near Interstate Five. The driver turned left into the oncoming traffic coming off Interstate Five and went about 15 feet before bailing out.

Agent Wallace and Alvarez watched as the male Hispanic driver bailed out of the vehicle and quickly shed his hard hat and vest. The driver was wearing a green short sleeved shirt and was the only person seen to have run from the vehicle. Multiple agents pursued the driver and he was apprehended after running down the nearby embankment and jumping over a wire mesh fence and then a wooden fence into the parking lot of a nearby apartment complex. Agent Ausfelt, identified himself as a Border Patrol Agent and apprehended the driver, later identified as the defendant **Jose Maria BUSTOS**.

Agents discovered ten illegal aliens in a fabricated metal compartment in the bed of the cloned Kiewit truck. One female illegal alien was found in the front cab of the pick up truck. Agents Leon, Kahl, and Hinojosa identified themselves as Border Patrol agents and began to question the twelve detained subjects as to their immigration status. Eleven of these persons stated that they were undocumented Mexican nationals and that they were illegally present in the United States. BUSTOS said that he was a United States citizen. All twelve persons were placed under arrest and transported to the Chula Vista Station for further processing.

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DEFENDANT STATEMENT:

The defendant **Jose Maria BUSTOS** was advised of his Miranda rights and he was willing to make a statement without an attorney present. BUSTOS stated that he became involved in the smuggling of undocumented aliens through some friends, with whom he had grown up, in Colonia Libertad, Tijuana. He stated that after getting out of jail for the stolen vehicle charge, he had moved to Tijuana, where his Mother lives, and that he began using methamphetamine a lot. He stated that he was in a bad way, and that a friend of his, who is called "El Aguitas" had asked him if he wanted to make some money smuggling aliens. He stated that "El Aguitas" is "El Ticha's" brother.

BUSTOS stated that he agreed, and that he was told that he would have to drive a truck containing undocumented aliens from the border fence north. BUSTOS said that he was to be paid $500.00 (USD) per alien whom he successfully transported. BUSTOS said that it seemed easy to him and that he needed the money. He stated that the aliens whom he was going to smuggle belonged to an alien smuggling boss known as "El Miguel". At the border fence, BUSTOS stated that he was shown the route which he was to take, driving the truck, through a hole in the primary fence. BUSTOS stated that at the border fence there had been a number of "El Migue's" employees, including "El Gordo", "El Aguitas", "El Paleton", "El Borrego", "El Pacoman", and "El Tronis".

BUSTOS stated that an unknown individual had driven the truck south to the U.S./Mexico border fence, and parked it just north of the fence itself. BUSTOS said that he had jumped the fence and gotten behind the wheel of the truck, whilst a number of the smuggled aliens got into a box in the bed of the pickup, and two more smuggled aliens got into the cab with him. He stated that he drove away, and said that he was only to have driven the truck to the freeway, at which point someone was going to meet him and lead him to the load house. BUSTOS said that he did not know where the load house was located.

When asked how many aliens he was smuggling, BUSTOS stated that he didn't know and that he had not counted them. He said that there might have been between 6 and 15 aliens in the group. When asked, BUSTOS stated that he was aware that these persons did not have documents which allowed them to enter or be in the United States legally.

BUSTOS said that he began to drive north and that at one point he saw that there was a spike strip laid out in front of his vehicle and so he swerved to attempt to avoid it. BUSTOS said that he was driving north and that he was very startled by everything and that he was trying to get away. He stated that he attempted to swerve around a number of other spike strips, and then eventually stopped and tried to run away on foot.

When asked why he had swerved towards two of the agents who had been deploying the spike strips, he stated that he never saw any agents, but only the cars and the strips themselves, and that he was only trying to avoid hitting the spikes. He reiterated that he never noticed any agents on foot, deploying the stop sticks.

CONTINUATION OF COMPLAINT:
Jose Maria BUSTOS

MATERIAL WITNESSES STATEMENTS:

Material Witnesses **Cecilia GARCIA-Perez, Maria Del Rosario MEJIA-Jimenez,** an d **Chavelo LOZADA-Gomez** stated that they are citizens and nationals of Mexico illegally present in the United States. They stated that they did not have any immigration documents allowing them to be in the United States legally. They stated that arrangements had been made to be smuggled into the United States. All the material witnesses stated that they were to pay approximately $4,000.00 to $5,000.00 U.S. dollars to be smuggled into the United States.

Executed on August 16, 2008 at 10:00 a.m.

Irene S. Aguirre
Senior Patrol Agent

On the basis of the facts presented in the probable cause statement consisting of 1 page(s), I find probable cause to believe that the defendant named in this probable cause statement committed the offense on **August 14, 2008,** in violation of Title **8,** United States Code, Section **1324**.

Barbara L. Major
United States Magistrate Judge

8/16/08 at 10:29am
Date/Time